***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

+W.P.NO.6156 OF 2002

% 11.7.2007

Between:

#Anudeep, represented by his natural Guardian/Mother
Smt. K. Lalithamma, Telkapalli Village,
Mahaboobnagar District.

…Petitioner

AND

$The District Collector, Mahaboobnagar and others

…Respondents

! Counsel for the Petitioner: Sri A. Narasimha Reddy

^ Counsel for The Respondent Nos.1 and 2: G.P. for Panchayat Raj

Respondent No. 3: Sri G.Elisha, Standing Counsel

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> Head Note:

? CITATIONS:

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O R D E R:

The petitioner purchased a plot of land in Sy.No.497, Telkapalli Village, Mahaboobnagar District, in the year 2001. Thereafter, he submitted an application on 9.11.2001 to the 3rd respondent-the Gram Panchayat, under Section 127 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'), with a request to grant permission to construct a shop in the plot. The permission was neither granted nor rejected by the 3rd respondent. Thereupon, the petitioner got issued a notice dated 19.3.2002 to the 3rd respondent, expressing his intention to proceed with the construction, and accordingly started the same. When the construction was half way through, the 3rd respondent attempted to stop it. Petitioner seeks a writ of Mandamus, to declare the action of the respondents in interfering with the construction undertaken by him, as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of

India.

The petitioner alleges that by operation of law, the permission is deemed to have been granted and in that view of the matter there was absolutely no basis for the 3rd respondent to interfere with the construction.

The 3rd respondent filed counter affidavit, wherein it is admitted that the petitioner submitted an application on 9.11.2001 with a request to grant permission to construct the shop. It is, however, stated that parallel claims were made as regards the same plot by others and in that view of the matter, the permission could not be granted. It is stated that the petitioner was proceeding with the construction, in the absence of any specific permission and it was accordingly stopped.

Sri P. Mayur Reddy, Advocate representing Sri A. Narasimha Reddy, learned counsel for the petitioner, submits that admittedly the application was filed on 9.11.2001 and even after expiry of 15 days, no order was passed on it. He submits that the consequences, provided for under the proviso to sub-section (3) of Section 127 of the Act, operated, resulting in grant of permission. He contends that there is absolutely no basis for the 3rd respondent, in interfering with the construction.

The learned Government Pleader for Panchayat Raj and Sri G. Elisha, the learned Standing Counsel for the 3rd respondent-Gram Panchayat submit that the petitioner submitted application, which was not accompanied by full details, the relevant title documents and for that reason, the application could not be processed further. It is further submitted that the deemed permission would accrue to the applicant if

only the application is otherwise in order and in the instant case, the application was incomplete in several respects.

The petitioner submitted an application on 9.11.2001 seeking permission to construct a shop over the plot purchased by him. This fact is not disputed by the respondents. Section 127 of the Act prescribes the procedure, to be followed while dealing with the applications filed for grant of licences or permissions. Sub-section (3) becomes relevant in the present context; and it reads as under.

> ***"Every order of the authority competent under this Act or any rule or bye-law made thereunder to pass an order refusing, suspending, cancelling or modifying a licence or permission shall be in writing and shall state the grounds on which it proceeds.***
>
> ***Provided that every application for a licence or permission under this Act shall be disposed of within fifteen days from the date of receipt thereof or from the date of receipt of approvals or completion of other formalities prescribed failing which it shall be deemed that licence or permission is granted."***

It is evident from the provision that an application made for licence or permission must be disposed of within fifteen days from the date of receipt, and in case it is not so disposed of, the licence or the permission, as the case may be, shall be deemed to have been granted. By operation of this provision, the permission applied for by the petitioner stood granted.

It is true that an incomplete and inappropriate application cannot give rise to any deemed permission. Such a situation would arise if only the defects in the application are pointed out and the applicant had failed to rectify the same. The operation of the deeming clause cannot be stopped unless the defect, if any, noticed by the local authority is communicated to the applicant. The 3rd respondent failed to pass any

specific order on the application submitted by the petitioner. He did not choose to point out any defect in the application even after it received notice dated 19.3.2002 issued by the petitioner. Therefore, it is not open to the 3rd respondent to plead that the application was defective, or to interfere with the construction.

For the foregoing reasons, the writ petition is allowed and the respondents are restrained from interfering with the construction of the shop by the petitioner. It is, however, made clear that the petitioner shall conform to the requirements; such as set back and regulations, if any, stipulated for the area. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

11th July, 2007.

Note: L.R. copy to be marked.

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